

REHEARING APR 11 2011

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**BEFORE THE ARIZONA CORPORATION COMMISSION**  
**RECEIVED**

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GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of:	)	DOCKET NUMBER S-20714A-09-0553
	)	
THEODORE J. HOGAN & ASSOCIATES	)	RESPONDENT'S AMENDED REQUEST
LLC a.k.a. TED HOGAN AND	)	FOR REHEARING
ASSOCIATES, an Arizona Limited Liability Company	)	
	)	
THEODORE J. HOGAN a.k.a. TED KILLS IN THE FOG,	)	
a married man	)	
	)	
And	)	
	)	
CHRISTINA L. DAMITIO a.k.a.	)	
CHRISTINA HOGAN, a married woman	)	
	)	
Respondents	)	

Arizona Corporation Commission  
**DOCKETED**

MAR 21 2011

DOCKETED BY

It comes now the respondent's, and as for their Amended Request for rehearing, state and  
Allege the following:

I.

Irregularity in the Commission's proceedings R-14-3-112 (c)(1)

II.

The Administrative Law Judge improperly admitted evidence at hearing R-14-3-112 (c)(6)

III.

The restitution and penalties are not justified R-14-3-112 (c)(7)

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Irregularity in the Commission proceedings.

On June 15<sup>th</sup>, 2010 the Respondent's appeared at an open hearing and they informed the Administrative Law Judge that they would not participate in the hearing because they were not represented by council, since they could not afford to retain one. Their primary concern was that if they participated verbally, they would be waiving their constitutional right under the Fifth Amendment of the United States Constitution, not to incriminate themselves.

It is well established that the right not to testify on matters which may incriminate them in Civil matters. *Minn. v Murphy*, 465U.S.420 (1984); *Baxter v Dalmigiano* 425U.S.308 (1976), and *Doe v Glarzer*, 232F.3D1258, 232P.3D1258, 232F..3D158 (2000).

It was Mr. Hogan's fear that if he participated freely, without benefit of counsel, there was a good possibility that this would be interpreted by this forum and any other which appear on appeal or review, that respondent's had indeed waived their *Fifth Amendment right to remain silent*.

With these constitutional barriers interjected in this forum, it was incumbent on the Administrative Law Judge to adjourn the hearing and instruct the respondent's that he would give them a certain time frame to secure counsel. This simple maneuver would have effectively laid to rest any constitutional issues.

In reviewing the Securities Divisions response to respondent's request for rehearing, it is apparent that the thrust of the State's objection to respondent's request for hearing is that the respondents could and would not refute or rebut any testimony or written evidence.

Mr. Hogan's fear of self-incrimination was very real in light of the draconian penalties recommended by the commission .

The respondents, as a matter of right, were entitled to a fair hearing.

This was an impossibility given the fact that they appeared pro per with the accompanying inability to speak freely. Under any scenario the hearing conducted on June 15<sup>th</sup> and 21<sup>st</sup> cannot be

considered anywhere near the level of being fair and impartial. In fact, the hearing took a strong resemblance to a kangaroo forum.

## II.

The Administrative Law Judge improperly admitted evidence at hearing R-14-3-112 (c)(6)

The Administrative Law Judge permitted the admission of 32 investors that Mr. Baron testified that he had composed from "a variety of sources and documents that had been sent to him".

Mr. Waller testified that he had become familiar with Mr. Hogan in 1988 and 1989 as lead investigator in an investigation of Mr. Hogan. Involved in the investigation inter alia, the Inspector's General Office of the Department of the Interior, the United States Attorney's Office, The Internal Revenue Service Criminal Investigations Division, and the Federal Bureau of Investigation.

Mr. Waller and Mr. Baron failed to disclose to the Commission that this investigation culminated in a jury (all white) before the United States District Court, for the District of Montana, Billings Division on January 12<sup>th</sup> 2007. The defendant was found not guilty on all counts of Securities Law violations (ex1a).

All persons listed by the Commission on Mr. Baron's list of investors and possible witnesses, and any transactions between "investors", were conducted prior to 1997. All but two parties on the "investor" list occurred before 2007 and were the subjects of the jury verdict wherein the "investors" were held not to be "investors", but provided Mr. Hogan with loans and not subject to the Securities statutes. As such, in effect, the Commission's order overturned the holdings of the Federal District Court, wherein the Federal Court found these parties to be lenders and not "investors".

These material facts that were not disclosed by Mr. Waller or Mr. Baron misled the Commission that they were deciding matters of first impression in re the respondents. Both men should be required to submit their resignation for the lack of ethical conduct, lack of transparency, and misfeasance of office.

Mr. Waller has caused Mr. Hogan to be persecuted in Montana, followed by Virginia, New Mexico, Illinois, and now Arizona. Shades of Les Miserables.

### III.

The restitution and penalties are not justified R14-3-112 (c)(7)

The Commission ordered restitution in the sum of \$ 2,208,310.00 U.S. dollars for persons listed as "investors". All but two on the list of "investors" occurred after 2007. These were John Bradshaw and Kathleen Perry. Mr. Bradshaw loaned Mr. Hogan no money, and in fact induced his friend and bookkeeper, Kathleen Perry, to provide loan money. Mr. Hogan received a receipt (see Exhibit 2) from Kathleen Perry indicating that all funds loaned had been repaid to her. Mr. Bradshaw could not provide the Commissions with any certain sums that he believed were loaned and returned by Mr. Hogan. Kathleen Perry has a record (see Exhibit 2) of all transactions, and in her disclaimer agreement acknowledges the complete return of her monies, including other "funds, interest, and payments", and monies or distributions of any kind due her from Theodore J. Hogan and Associates.

Prior to Kathleen Perry loaning money to Mr. Hogan, they had never met on a business basis. Mr. Bradshaw induced Kathleen Perry to loan monies for the project.

The Commission's order overrules the jury determination of the Federal District Court that the funds supplied by those parties listed as "investors", were in fact lenders of funds and not "investors".

The administrative penalties were compiled by utilizing the number 31 as "investors" and each transaction were held to have violated three violations. These facts necessitate the recompilation of administrative penalties and restitution.

### CONCLUSION

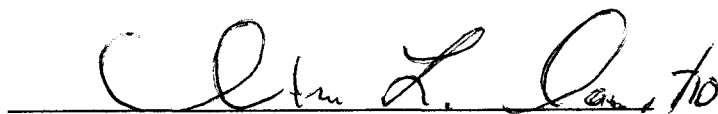
The Respondents respectfully request that they be permitted a rehearing on these matters, where the Respondents avow they will be represented by counsel.

Respectfully submitted this day of Mar 16, 2011 by Respondents Christina L. Diamitio, a.k.a. Christina Hogan, a married woman and Theodore J. Hogan, a.k.a. Ted Kills In The Fog, a married man.



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• Theodore J. Hogan



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Christina L. Diamitio

EX-1

IN THE UNITED STATES DISTRICT COURT

FILED

BILLINGS, MT

FOR THE DISTRICT OF MONTANA

2007 JAN 12 AM 11 38

BILLINGS DIVISION

PATRICK E. JOY... CLERK

*P. Cluff*  
DEPUTY CLERK

UNITED STATES OF AMERICA,

CR 06-49

Plaintiff,

VERDICT FORM

vs.

FALSE DOCUMENT OR WRITING  
(18 U.S.C. § 1001(a)(3))

THEODORE JON HOGAN,

Defendant.

Please return a verdict by placing an "X" or "v" in the space provided.

COUNT I

False Document or Writing  
(18 U.S.C. § 1001(a)(3))

We, the jury in the above entitled and numbered case, as to the crime of making  
a false document or writing as charged in the indictment, find Theodore Jon Hogan:

☒ NOT GUILTY ☐ GUILTY

COUNT II

False Document or Writing  
(18 U.S.C. § 1001(a)(3))

We, the jury in the above entitled and numbered case, as to the crime of making  
a false document or writing as charged in the indictment, find Theodore Jon Hogan:

☒ NOT GUILTY ☐ GUILTY

EX-7

COUNT III  
False Document or Writing  
(18 U.S.C. § 1001(a)(3))

We, the jury in the above entitled and numbered case, as to the crime of making  
a false document or writing as charged in the indictment, find Theodore Jon Hogan:

X NOT GUILTY        GUILTY

Date

Foreperson

Ex 2

DISCLAIMER AGREEMENT

I, Kathleen Perry, hereby acknowledge that I have received from Theodore J. Hogan & Associates and Ted Hogan (AKA Ted Kills In The Fog) the amount of Seventeen Thousand Three Hundred four Dollars and Sixty-Six Cents (\$17,304.66), which Kathleen Perry acknowledges constitutes the complete return of her investment in Theodore J. Hogan & Associates, along with all other funds, interest, payments, monies and/or distributions of any kind due her from Theodore J. Hogan & Associates. Kathleen Perry specifically acknowledges and recognizes that, as of and through the receipt of the Return Payment, she has no further right to any payments, returns, profit distributions or to the receipt of any funds or distributions whatsoever from Theodore J. Hogan & Associates or Ted Hogan, Ted Kills In The Fog, Christina Damitio, Katherine Hogan Gray, or anybody acting on their behalf.

Dated: 10/13/05

Kathleen Perry  
Kathleen Perry

State of Arizona )

County of Yavapai )

On this 13<sup>th</sup> day of October, 20 05, before me personally appeared Kathleen Perry (name of signer), whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed the above/attached document.

(seal)

James G. Strohm  
Notary Public

